HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 61 of 2001

{Old No.5834/2000}

1. Shahender Singh
   S/o Sri Bhawar Singh
   R/o Ankit Vihar Gandhi Colony
   P.S. New Mandi, Muzaffarnagar
2. Neeraj Kumar
   S/o Sri Shahender Singh
   R/o Ankit Vihar
   Gandhi Colony
   P.S. New Mandi
   District Muzaffarnagar
3. Naresh Kumar
   S/o Sri Bhawar Singh
   R/o Village Dattiyana
   P.S. chappar
   District Muzaffarnagar
4. Kanak Singh
   S/o Sri Gyan Singh
   R/o village Dattiyana
   P.S. Cahpar
   District Muzaffarnagar ……Applicants

Versus

1. State of Uttaranchal
2. Harpal Singh
   S/o Sri Lal Singh
   R/o village Dattiyana
   District Muzaffarnagar ……Respondents

Hon'ble J. C. S. Rawat, J.

1. Heard Sri Pankaj Miglani learned counsel for the applicants and learned A.G.A. None appeared for the respondent No.2 despite service.

2. This petition has been filed for quashing the complaint dated 8.9.1999 and the proceedings of complaint case No.250/2000 including the summoning order dated 12.7.2000 under section 323, 392, 504, 506 I.P.C. pending in the court of IInd Addl. Chief Judicial Magistrate, Roorkee, District Haridwar.

3. Brief facts of the case are that on 8.9.1999 the respondent No.2 filed a complaint before the Addl. Chief Judicial Magistrate, Roorkee under section 323, 392, 504, 506 I.P.C. against the applicants with the allegations that when he was waiting for bus to Bahadrabad at Roorkee bus stand, all the accused-applicants came there and beat him with their hands and legs and also looted Rs.1650/- from his pocket. Thereafter, the Magistrate recorded the statements under section 200 & 202 Cr.P.C. The Magistrate took cognizance against the applicants. Feeling aggrieved by this, the applicants have come up before this Court.

4. It has been alleged in the petition that the applicant No.1 and 3 are the clerks of Sri Nahar Singh (Advocate) and Sri Nawab Singh (Advocate) in Muzaffarnagar court respectively. It has been alleged in the petition that the complainant has stated in his evidence that he has received injuries at the time of incident, but no medical report was annexed with the complaint. The complainant sent the said complaint to the S.P. City Haridwar through U.P.C. and not by registered post.

5. The learned counsel for the applicants contended that the complainant has produced only two witnesses i.e. Tejpal Singh and Neertu Singh. These witnesses are related to the complainant and there is no independent witness of the alleged incident. The learned Magistrate has not put any question to the witnesses. It is the duty of the Magistrate to ensure as to whether the case is probable and whether the case is concocted or correct one. The learned Magistrate should have put questions to the witnesses as well as to the complainant. The

learned counsel for the applicants has referred the decision of the Hon'ble Apex Court in **M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997(8) S.C. p/705,** in which it has been held as under:

> *"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."*

6. The above proposition of law clearly emphasizes that the Magistrate, while taking the cognizance, should scrutinize the evidence and put the questions to all the witnesses as well as to the complainant.

7. The Hon'ble Supreme Court in series of the judgments referred above relating to the exercise of the inherent power under section 482 Cr.P.C. or extraordinary powers under Article 226 of the Constitution have laid down the guidelines and categories of case by way of illustration wherein such powers can be exercise. The Apex Court while laying down the guidelines had placed the inherent power under section 482 Cr.P.C.

8. In view of the above, the cognizance order passed by the learned Magistrate is based on the ex-parte evidence. The learned Magistrate has taken the cognizance without making any probe. The Magistrate should have put the question to the complainant and his witnesses to know the veracity of the incident. It is also admitted case that there are litigations in between the parties. The Magistrate should have asked the complainant to produce the documents. He should have put the questions with regard to the litigations also. The Magistrate should have seen the corroborative evidence. As such, the cognizance order was passed in a mechanical way.

10. Therefore, the cognizance order dated 12.7.2000 passed by IInd Addl. Chief Judicial Magistrate, Roorkee, District Haridwar under section 323, 392, 504, 506 I.P.C. is set-aside. The case is remitted back to the

learned Magistrate to decide the same afresh in the light of the observations made above.

10. The petition is disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 11.8.2005

LSR